

Permanent Disability Rating Schedule Public Forum

May 9, 2008 through May 23, 2008

Zola Lee Papich

May 23, 2008

I think an increase of 16% would be a good start.

Henry Khalili, Esq.

May 23, 2008

As an attorney representing injured workers in workers' compensation cases, I find the proposed new 2009 permanent disability schedule to be inadequate and not supported by the empirical evidence produced to date. It appears that by the DWC's own studies, permanent disability values have decreased on average by 40%. Increasing the permanent disability benefits (selectively) under the schedule for 2009 by only 16% is incongruous with the supporting empirical studies.

In my own personal experience, my clients typically receive far less in permanent disability awards or settlements under the permanent disability schedule in effect prior to SB899. For example, one client has a knee injury and a back injury which was rated under both the new and the old permanent disability schedule. Under the old schedule, the injuries were rated at 71% permanent disability. Under the new schedule, the rating is 8% whole person impairment. This client is unable to work as result of her industrial injuries. There is a disparate difference between the two ratings for permanent disability, which is not uncommon with many of my clients' cases. I therefore find the proposed 2009 permissibility schedule to be substantially insufficient.

Sue Borg

May 23, 2008

Submitted on behalf of

The California Applicants' Attorneys Association

The California Applicants' Attorneys Association strongly opposes the proposed changes to the Future Earning Capacity (FEC) adjustments in the Permanent Disability Rating Schedule (PDRS) as posted on the DWC Forum.

In his veto message on Senator Perata's SB 815 last year the Governor stated that the administration was monitoring the impact of the new laws on injured workers, and he promised that "if seriously injured workers were falling through the cracks" his administration would take necessary steps to "ensure that injured workers unfairly impacted by workers' comp reform receive appropriate medical treatment and indemnity benefits." In view of the fact that multiple studies – including one by your Division –

show that the impact of the 2005 PDRS was to cut permanent disability benefits by more than half, the minimal increase in this proposal is grossly inadequate. In fact, even if the proposed changes were adopted, permanent disability benefits for the average disabled worker would still be down more than 65 percent.

The Legislature's intent in mandating the adoption of a new rating schedule as part of SB 899 was to make the rating process more consistent, uniform, and objective, not to slash benefits across the board. Multiple RAND studies had consistently shown that permanent disability benefits under the "old" PDRS were inadequate, and introduction of the 2005 PDRS which cut benefits in half has only made that problem worse.

We understand that some contend that RAND's conclusion that benefits under the old PDRS were inadequate are invalid because ratings under the "old" PDRS were often based on work restrictions and/or subjective factors. However, that criticism is irrelevant because ratings under the 2005 PDRS are based on medical criteria measured under the *AMA Guides*. In fact, it is the very worker that Governor Schwarzenegger said he did not want to harm – the most seriously injured worker who has a ratable impairment under the AMA-based rating schedule – who has had his or her permanent disability benefits slashed.

Reinstating only a fraction of the huge unintended reduction in permanent disability benefits caused by the adoption of the 2005 PDRS is unacceptable. California's Constitution mandates that benefits be adequate. It is clear that permanent disability benefits under both the 2005 PDRS and the proposed revision to that schedule utterly and completely fail to meet this standard.

Furthermore, although the 18 month period for collecting data under 8 Cal C Reg §9805.1 ended almost two years ago, and the studies upon which this proposal was allegedly based were released over a year ago, there is no evidence that the proposed FEC adjustments are empirically based. We find nothing in any of the empirical data released by the Division that connects or in any way relates to the use of an FEC adjustment range of 1.2 to 1.5. We can only conclude that the proposed FEC adjustment range – like the 1.1 to 1.4 range in the 2005 PDRS -- is based solely on a policy decision.

And because the proposed FEC adjustments are not empirically based, adopting these FEC adjustments would not improve the equity of the rating schedule. In fact, despite the Legislature's mandate to adopt an empirically based rating schedule – a mandate that was adopted to correct demonstrated problems of benefit inadequacy and inequity – benefits assigned under the 2009 PDRS would be no more equitable but significantly more inadequate than benefits were prior to enactment of SB 899.

In closing, the California Applicants' Attorneys Association strongly opposes adoption of the proposed changes to the FEC adjustments. Disabled workers rated under the 2005 PDRS are receiving permanent disability benefits that are far below the level awarded in most other states, and the minimal increase included in this proposal would do little to change this deplorable situation. We strongly urge the Governor to fulfill the pledges he made to not harm injured workers and to fix the problems caused by adoption of the 2005 PDRS.

Donna Gerber
Submitted on Behalf of
The California Nurses Association
National Nurses Organizing Committee

May 23, 2008

The 80,000 registered nurses of the California Nurses Association/National Nurses Organizing Committee (CNA/NNOC) are writing to address the proposed 2009 Permanent Disability Rating Schedule. It does not go nearly far enough. The Administrative Director proposes a schedule that would increase the average PD award by a little over 16%. A paltry 16% increase on an inadequate award is still inadequate.

Employers and insurers are now saving 70% on their permanent disability costs compared to 4 years ago. Adopting AMA evaluations for permanent disability has resulted in one-third of injured workers who used to get a PD rating now getting no rating or PD benefits at all. The remaining two-thirds of injured workers with PD ratings have seen their benefits slashed by over 50%.

When RNs are injured on the job, they frequently face serious consequences in terms of the seriousness of the work related injury and the limitations to perform their jobs which are intensely physical. Nursing surveys reveal that 83 percent of RNs work in spite of back pain, 52 percent report chronic back pain, and 12 percent who leave the profession say back injuries were the main, or significant, reason. Often, when RNs are unable to lift more than 20 pounds, this will be career ending and the nurse will be classified as permanently disabled, resulting in a huge impact on lifetime earnings and the nurses ability to care for themselves. We have young RNs sometimes in their 20's who have been so disabled from back injuries that they will never be without pain, much less able to support themselves and families.

Health care workers, 95% women, lead the nation in work-related musculoskeletal disorders (138% above first place). They suffer 17,005 more of these injuries (62,332 in 2002) than truck drivers listed as number one with 45,327 MSDs. As an example; in 2002, the University of California's 5 medical centers had over 700 such injuries. The 2006 Bureau of Labor Statistics data shows California now leading the nation in the number of MSDs suffered by its workers. **And every year for the past 5 years, the Governor vetoes a bill that requires hospitals to implement the preventions that are recommended by occupational health experts.**

California's nursing workforce is aging at the same time patient acuity and obesity is rising. Manual lifting can injure fragile patients by putting too much pressure on sensitive joints and compromised skin. It is imperative that we protect our nurses and other healthcare workers from injury. If and when work related injuries do occur, nurses and other health care workers need to know that if they become permanently disabled the benefits will ensure their financial needs are met.

It is unconscionable for the most severely injured workers to suffer such losses. And it is antithetical to Governor Schwarzenegger's and the Legislature's commitment to not harming the injured workers.

The empirical studies are available, and the Administrative Director has the chance to restore the excessive cuts made by the 2005 schedule. Doubling the awards would not be too much to ask; it would just restore the benefits that the Legislature never intended to cut.

Using the Division of Workers' Compensation's own published data, it is clear that the proposed May 2008 revised schedule is still too low, as the table below indicates.

Part of Body	Three-year wage loss	3-yr net loss after TD benefits	Award per proposed schedule	Current Award
Spine	\$40,300	\$29,600	\$19,435	\$15,410
Shoulder	\$24,400	\$14,300	\$ 8,153	\$ 7,693
Elbow	\$17,100	\$ 8,700	\$ 4,692	\$ 4,140
Ankle	\$21,500	\$12,900	\$ 7,521	\$ 6,003

The Administrative Director has the statutory obligation to calculate the diminished future earning capacity based on empirical wage loss data. Labor Code 4660(b)(2)^[1] requires the AD to incorporate empirical studies, such as the DWC's own empirical wage loss and return-to-work studies published in 2007. Using DWC's own studies justify nearly doubling PD awards. A 16% increase is simply not responsive.

We believe the evidence proves that the conservative approach would be doubling the PD awards. We also know that our injured members who will suffer first from their injuries, don't deserve to also suffer from low PD awards.

On behalf of all the work related, injured RNs in California; we propose that you augment this proposed regulation to significantly increase benefits. There are over 300,000 licensed RNs in California. Almost everyone has a relative or friend who is an RN. We urge you to think of them when you consider what action is the right action.

Brue Wick

May 23, 2008

CALPASC(California Professional Association of Specialty Contractors) is a not for profit trade association representing Trade Contractors and Suppliers of construction materials.

^[1] Labor Code 4660(b)

(2) For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

We appreciate the effort and openness in promulgating these revisions.

Based upon clear empirical evidence, we support:

1. The age adjustment revision.
2. The ranking of body parts revision.

Without clear supporting evidence, we oppose:

1. The increasing of the FEC multiplier.

Dennis Thomas

May 23, 2008

A 12-16% increase after a 50-70% decrease in permanent disability is an embarrassment. California was a leader in providing benefits to those unfortunate to have sustained injuries whether they were based upon negligence or work related events. Now we are 49th of the 50 states in permanent disability for most ratings for injured workers.

Employers and insurance companies are profiting from those individuals that are injured in the course and scope of their employment.

Shame on those who do not make the necessary adjustments to financially protect those injured while working.

Joe Coto
Member of the Assembly, District 23
Chair, Assembly Insurance Committee

May 23, 2008

As you probably know, last month I, along with Assemblymember Hernandez, met with Susan Kennedy and Michael Prosio in the Governor's Office to discuss permanent disability issues. In particular, we urged the Governor's senior advisors to recommend to the Governor that the draft regulations that we understood to be awaiting his decision be released. I am pleased to see that the Governor has moved this issue forward by releasing the draft regulations for pre-APA comment on the Division's Forum. While this is a step in the right direction, I am disappointed that the proposal does not go nearly far enough.

From my perspective, a little history is in order. While I was not a Member of the Assembly during the debate on SB 899, I was a school superintendent who had the responsibility to provide workers' compensation coverage for district employees. I was well aware of the problems with the system, and the need for reforms.

There were a number of reforms that were asked for by employers. They said too many people were allowed into the system, and the awards were too subjective. Therefore, employers asked for objective medical findings. They asked for the AMA Guides to be adopted. They asked for stronger apportionment rules. One thing that I never heard was that workers with undisputed injuries based on objective medical findings were being overpaid.

However, after the implementation of SB 899's new rules, these legitimate, objectively evaluated workers have had their permanent disability benefits reduced by over 50% according to all credible studies. In the face of this unfairness, the draft proposal calls for adjustments that will average 16%. If I understand the math correctly, what used to be a \$100 benefit was reduced by over 50% to approximately \$50. The proposal calls for that \$50 benefit to be increased by \$8 to \$58. This still leaves workers who were never the target of the reforms with 42% less than pre-SB 899 benefits.

I urge you to improve your proposal and take care of these objectively injured workers who were never intended to be targeted by the reforms.

Michael McClain
Submitted on Behalf of
California Workers' Compensation Institute

May 23, 2008

Labor Code section 4660

Labor Code section 4660 requires that the permanent disability rating schedule (PDRS) include several specific elements, including consideration of the employee's age and diminished future earning capacity. Section 4660(b) defines diminished future earning capacity as follows:

(b) For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

Regulation section 9805.1 required the Division of Workers' Compensation to compile data for 18 months and to evaluate the aggregate effect of the diminished future earning capacity adjustment on permanent partial disability ratings under the 2005 PDRS and revise the schedule, as necessary, based on that analysis.

DWC Analysis

The 2005 permanent disability rating schedule, developed by the DWC and administrative director Andrea Hoch was based on the methodology and the findings of the 2003 RAND Report mandated by the statute. That methodology has been validated by the WCAB in a number of En Banc opinions and the various attacks on the FEC

variant have been rejected by a number of District Courts of Appeal. By continuing to rely on the RAND methodology, Administrative Director Nevans has complied with the dictates of the statute and continued a process approved by the WCAB and validated by the Courts of Appeal.

The AD has continued to use the methodology devised by RAND for the December 2003 assessment of injured workers' long-term loss of income that the Legislature specifically included in Labor Code section 4660. The result of this methodology is that the injury categories are given FEC ranges according to their ratio of average standard rating to proportional wage losses. The Division then collected data over an 18-month period to evaluate the continued viability of that methodology and issued a three-part analysis (2007 DWC Analysis) that established the rationale for the proposed revision to the schedule.

It is the statutory responsibility of the AD to establish a permanent disability assessment process that is fair, accurate, and based on empirical evidence. As the 2007 DWC Analysis indicates, the AD has enhanced the methodology and updated the rating formula using the most current, relevant, and comprehensive data.

Diminished Future Earning Capacity

While the higher end of the updated FEC range (1.5 modifier producing an FEC ranking of 8) may provide greater equity at the lower and mid ranges of PD, the AD must also consider that this change will have a ripple effect at the highest end of the rating spectrum. How many additional life pensions and total permanent disability ratings will be created simply by this technical revision to the FEC? By attaching the higher FEC range to certain injuries, the Division must also ensure that the resulting ratings are, across the board, justified.

Injury Type

The reordering of injury types is, again, based on data compiled by the DWC Analysis and indicates that relative earnings loss has changed.

Age

The revision to the age variant, while based on the DWC data assessment, is a significant change to the permanent disability evaluation process. Traditionally, the belief in California has been that the permanent residuals from work-related injuries have a more extreme financial consequence for older workers, and the age variant has been geared to compensate for that.

The proposed revisions to the age variant are based on findings from the 2003 RAND Report indicating that the percentage of proportional wage loss is actually higher for the youngest category of workers (21 and younger) and the oldest workers (52 and older). To the extent that these findings are based on empirical evidence, the conventional wisdom underlying the age variant should be revised.

Consider the following language in the 2005 Permanent Disability Rating Schedule “A permanent disability rating can range from 0% to 100%. Zero percent signifies no reduction of earning capacity, while 100% represents permanent total disability. A rating between 0% and 100% represents permanent partial disability. Permanent total disability represents a level of disability at which an employee has sustained a total loss of earning capacity.”

Just a quick note to point out that “earning capacity”, as discussed above and “wage loss”, which was studied by RAND (December 2004) are two concepts that are intermingled in both the Labor Code 4660 and SB 899 but are not the same things. The 2005 PDRS and its FEC modifier do not accurately reflect either concept. Wage loss is in fact the amount of money not being made during time spent off work by an individual. On the other hand, loss of earning capacity is the difference in pre-injury wage and post-injury, return-to-work wage. When calculated out over the individuals remaining work life this is called “future wage loss”. These terms being used synonymously are a major flaw in the California Workers’ Compensation System’s attempt to provide adequate benefits to injured workers.

The Labor Code defines DFEC as “For purposes of this section, an employee’s diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees.” So DFEC is equated with long-term loss of income or wages, unlike what the schedule alludes to above, which was earning capacity.

In dollars and cents, earning capacity means that if someone could earn \$40,000.00 per year, and they can only earn \$25,000.00 per year after an injury, they are losing \$15,000.00 per year. This would illustrate a diminished “earning capacity” of 37.5%. However, the same person’s wage loss, if it took he or she one year to get back to work would have only been \$40,000 x 1, or \$40,000.00. In civil litigation, this individual would be described as having past wage loss of \$40,000.00, future wage loss of \$150,000.00 (for 10 years of remaining work life), and having a loss of earning capacity of 43.2%.

In Workers’ Comp, regardless of which term the Labor Code is referring to, it is a fact that by increasing a Whole Person Impairment rating by an average of 12%, according to the proposed changes to the new PDRS, this may only put \$2,000 to \$3,000 more dollars in one’s pocket for an injury. This does not even come close to the past wage loss of \$40,000.00 or future wage loss of \$150,000.00 loss resulting from an individual’s diminished earning capacity in the example reference above.

Regarding the basis for the amount/percentage of increases originally established, this is described in the 2005 PDRS as follows: “A series of FEC adjustment factors were established to correspond to the eight ranges described above. (See column 4 of Table A below.) The smallest adjustment factor is 1.1000 which will result in a 10% increase when applied to the AMA whole person impairment rating. The largest is 1.4000 which will result in a 40% increase.” The choice made here, which are now being increased a bit, has never been explained and there is no mention of recommended amounts in the

RAND study. In addition, they have no relation to the actual dollar amount lost while off work or the loss of earning capacity or the resulting loss of income over one's work life.

Thus, it is important to understand 1) the difference between lost wages vs. diminished earning capacity; 2) that the FEC does not truly relate to either of these concepts but makes up its own; and 3) that by increasing the FEC modifier, it does not increase the WPI but incrementally resulting in minimal increase in dollars. On this latter issue consider, for example, a 10% WPI rating being increased by an FEC rank of 40%. This increases the rating by 4 percentage points to a Permanent Disability of 14%. Or for a 20% WPI, multiplying by the same 40% increases 8 points to a PD of 28%. However, neither of these increases account for an individual who may have returned work after 6 months and is earning more than they made prior to their injury (i.e.: a positive gain in earning capacity), or who has not been able to return to work at all (i.e.: 100% diminished earning capacity), or who is only able to find part-time work, in a minimum wage occupation, after 5 years (i.e.: a DFEC of maybe 60-70%). This "one size fits all" solution, providing arbitrary and limited increases in benefits for DFEC is as reasonable as equating "earning capacity" to "wage loss" as demonstrated above.

Angie Wei
Submitted on Behalf of
The California Labor Federation, AFL-CIO

May 21, 2008

The California Labor Federation, AFL-CIO submits the following comments in response to the DWC's proposed changes to the permanent disability rating schedule.

The proposed 2009 Permanent Disability (PD) Rating Schedule is a step in the right direction, but it does not go nearly far enough. The proposal would increase the average PD award by a little over 16%. A paltry 16% increase on an already inadequate award is still inadequate.

Employers and insurers are now saving 70% on their permanent disability costs compared to 4 years ago. A small part of that saving can be credited to the decline in frequency of industrial injuries. More of it is due to SB 899's changes in the Labor Code, including AMA evaluations, apportionment, and taking away 15 weeks of benefits from most awards. The largest part of the savings to employers and insurers – and the largest part of the PD benefit cuts imposed on injured workers – is due to the 2005 revision of the PD rating schedule.

Using the AMA evaluations has resulted in one-third of injured workers who used to get a PD rating now getting no rating or PD benefits at all. The remaining two-thirds of injured workers with PD ratings have had their benefits slashed by over 50%. It is unconscionable that these most severely injured workers continue to suffer such losses. And it is antithetical to Governor Schwarzenegger's and the Legislature's stated commitment to not harming the injured workers.

Even before these drastic cuts, PD benefits did not make up for the lost earnings of the many permanently injured workers who lost their jobs. For these workers, the wage losses are serious and sustained. With these cuts, California's income replacement for injured workers who lose their jobs is a disgrace, even worse than it was before.

The empirical studies are available, and the Administrative Director now has the chance to restore the excessive cuts made by the 2005 schedule. Doubling the awards would not be too much to ask; it would just restore the benefits that the Legislature never intended to cut.

Using the Division of Workers' Compensation's own published data, it is clear that the proposed May 2008 revised schedule is still too low. In its "Uncompensated Wage Loss" report, the DWC shows that the average spine injury has a 3-year wage loss of \$29,600 even after compensation received in TD benefits. The average award under the newly proposed schedule would be \$19,435. This "increased" award is still more than \$10,000 lower than what DWC estimates to be 3-year wage loss. While that might look like two-thirds wage replacement, we must keep in mind that wage losses continue long past three years and long after the PD award is over.

Some other examples:

Part of Body	Three-year wage loss	3-yr net loss after TD benefits	Award per proposed schedule	Current Award
Spine	\$40,300	\$29,600	\$19,435	\$15,410
Shoulder	\$24,400	\$14,300	\$ 8,153	\$7,693
Elbow	\$17,100	\$ 8,700	\$ 4,692	\$4,140
Ankle	\$21,500	\$12,900	\$ 7,521	\$6,003

Because wage losses continue long after the three-year period of these studies, the awards should at least equal the average three-year wage loss (net loss after TD benefits).

The Administrative Director has the statutory obligation to calculate the diminished future earning capacity based on empirical wage loss data. Labor Code 4660(b)(2)¹ requires the AD to incorporate empirical studies, such as the DWC's own empirical wage loss and return-to-work studies published in 2007. DWC's own studies justify nearly doubling PD awards. A 16% increase is simply not enough.

This proposed regulation should be augmented with more empirical data, as required by the Labor Code. We are confident that when such data is incorporated, PD benefits will be increased to where they should be.

¹ Labor Code 4660(b)

(2) For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

California Chamber of Commerce
California Manufacturers and Technology Association
California Coalition on Workers' Compensation
California Association of Joint Powers Authorities
California Professional Association of Specialty Contractors
California Grocers Association
California Independent Oil Marketers Association
California Retailers Association
National Federation of Independent Business
California Self Insurers Association
California Hospital Association
California League of Food Processors
California Restaurant Association
California State Association of Counties

The coalition of public and private employers listed above would like to thank you for the opportunity to provide comments to the Division of Workers' Compensation (DWC) regarding the proposed Permanent Disability Rating Schedule (PDRS) revision.

We would also like to thank the DWC staff for engaging in what can only be described as an open and deliberative process. The DWC staff invited representatives of all stakeholder groups – employers, injured workers, applicant attorneys, insurers, and more – to attend advisory committee meetings at the end of 2007. In those meetings all stakeholders were provided with every opportunity to review and comment on the various studies that have been conducted by the DWC and other qualified organizations. Additionally, stakeholders were provided an opportunity to provide additional information and ideas to the group for consideration.

We have completed our review of the proposed regulatory adjustment to the PDRS. Unfortunately, we cannot provide in-depth feedback on all aspects of the changes at this time. The employer community has consistently maintained our position that any changes to the PDRS must be based on empirical evidence. Currently, we have data that provides justification for two of the changes proposed.

Age Adjustment: Based on the data provided by the DWC during the advisory committee meetings, we do support the proposed change to the age adjustment. We have had an opportunity to review the DWC justification for this change and we agree that it is necessary based on that analysis. This adjustment will address benefit equity in that it insures that benefit dollars are targeted at those injured workers most impact by their industrial injuries.

Ranking of Body Parts: Based on the data provided by the DWC during the advisory committee meetings, we do support this change as proposed. We have had an opportunity to review the DWC justification for this change and we agree

that it is necessary based on that analysis. This change, like the age adjustment, addresses benefit equity.

Both of the proposed modifications to the PDRS outlined above are based on empirical evidence that has been presented and discussed by representatives of all stakeholder groups. Utilizing this empirical evidence to make adjustments to the PDRS is consistent with current law and, therefore, should be supported in order to maintain the accuracy of the PDRS.

The last aspect of the proposed changes, increasing of the FEC multiplier, is still under consideration by the coalition at this time. While we have reviewed a number of studies that have been completed with regards to both PD ratings and wage loss, we have not yet seen an explanation of how that empirical evidence justifies the proposed increase. This modification to the PDRS differs from the other two adjustments in that it targets benefit adequacy instead of benefit equity. We look forward to reviewing the justification for the increase to the FEC multiplier that will be filed with the official regulatory package.

Again, thank you for providing the opportunity to provide comments on the proposed changes to the PDRS. We look forward to continuing the open and deliberative process that is already under way at the DWC.

Greg Nilsen

May 21, 2008

I have been employed full time all of my life since my high school graduation in 1976. I work in the automotive New Car Dealer arena as a Service Advisor. I have been in this business all my life starting as a lot porter and becoming a Master Mechanic then Service Manager leading to the job and the company that I enjoyed every day. I worked for this last Dealership for 18 plus years earning many awards for my achievements and earning into the six-figure area of income yearly for most of those 18 years. My wife and I had owned a Town Home in a nice neighborhood and had built up a comfortable equity in our home. On February 12, 2007 my life changed. I went to work as always and at around 7:30 or so in the morning sustained multiple injuries while doing my job. I was thrown forcefully backwards striking the corner of a metal auto lift post directly on my spine then falling to my knees onto a concrete floor. While I have received Medical treatment the authorizations are slow to come and an epidural procedure resulted in an impaled nerve, which has now given me Intractable Pain in my lower extremities and left me on strong medications. I have also required surgery on both of my knees, which was performed on February 11th, 2008, one day shy of the 1st anniversary of my injury. During this time my wife and I have been forced to give up our Town Home and lost all of the equity in the process my wife and I had to trade in both of our vehicles for one so that we could afford the payment. I have a wife whom I love dearly and yet I can no longer provide properly for her.

I worked all my life to have it all stripped away just because I went to work and did my job. In February of this coming year 2009 my workers compensation benefit will stop paying me at which time my wife and I will most likely end up homeless or barely

surviving in a slum because we will have nothing. All I have had to look forward to is the Permanent Disability through workers compensation and hope and pray that our Social Security system decides I am eligible to receive disability benefits, which I applied for over one year ago.

The SB899 bill was and is a failure. The Governor of California formed a committee and placed the principal of Chubb Ins. As the Chairman with a committee made up of anything but true representatives of those who are affected by the laws they were there to reform. I have been unsuccessful in achieving any answers from my letters to the Governor which ask how the committee was formed, what the backgrounds were of those who participated in writing SB899. Then how the bill shuffled under the radar to pass and be placed into law, thus costing me all that I worked so hard all my life to obtain with the hope of retiring in a comfortable style.

I would ask as an American born citizen whom has worked all his life for the American Dream that you right the wrong that has taken place. There are many like me who, just because we went to work and were the unfortunate victims of various injuries, have slowly been stripped of everything including our dignity because of this bill. You can start by allowing the revamp of the Permanent Disability rating system to one that is fair and just.

I would ask that each and every member of all branches of our State and Local Governments truly picture themselves in a situation that would leave them with only the workers compensation system of California to provide for them would they feel it to be fair? Walk in our shoes and perhaps you may understand the world in which we are now forced to live. Please work to give dignity back to the Citizens who by no fault of their own are suffering.

Theodora Poole-Cardenas

May 20, 2008

Thank you for requesting public comments regarding proposing a formula review of the wage losses suffered by all the hard working people like myself that were unfortunate enough to suffer on-the-job-injuries. You are our voice and pathway to a better road of financial recovery.

My injuries were serious, contusions of the fact, head, neck – strains of both thumbs, wrists and left knee which all required a brace. My right big toe was dislocated, developed a fever and as the days passed, swelled like a balloon – all very painful. Health care by the mandated carrier was minimal and recovery on-going.

Even though I am just a single example of an injured worker, multiply that by all the other and we are an army. The rippling effect in my close family includes my four daughters and my son-in-law, thirteen grandchildren and a number of aunts and uncles who no longer hear from me. Long distance calls and cable to run the computer and the television are no longer affordable. That also brought an end trying a vocational

education at the computer. Cards go out once a week and as that cost rises, cutting back is necessary.

Gas in Orange county rose 12 cents in two weeks and out of pocket cost require a 2 ½ bus trip one-way for Doctor's visits which just took 20 minutes in my car, but not being able to afford insurance, gas and maintenance is beyond what I can afford. Other may have even more severe problems acquiring food and utilities. The importance of this forum and its outcome will affect so many people for the rest of our lives. Remember us as you review our wage loss and any increase will go back into the economy here in California. It would mean \$240 a month to me, a car and cable.

Amber Wiley
Submitted on Behalf of

May 19, 2008

The ALPHA Fund
Association of California Healthcare Districts (ACHD)

The ALPHA Fund and the Association of California Healthcare Districts (ACHD) fully supports the Division of Workers' Compensation newly proposed Permanent Disability Rating Schedule.

ALPHA Fund is a self insurance pool that provides Workers' Compensation coverage to Health Care Districts, public and non-profit hospitals, clinics and nursing facilities throughout California. The 47 Participants in the Fund range from major urban medical centers to rural facilities, encompassing 20,000 employees.

ACHD represents 75 Healthcare Districts in California, and more than 2,000,000 Californians who rely on District public health facilities and programs for vital healthcare services annually.

We believe that the proposed rating schedule is a fair solution based on empirical data that properly allocates benefits to the injured worker. Moreover, it is in the best interest of the industry to review statistics on permanent disability claims since the reform in 2004 and make findings to adjust such benefits.

For these reasons, the ALPHA Fund and ACHD support the proposed permanent disability rating schedule.

Barbara Macken

May 18, 2008

Age discrimination is against the law, right. Then why is the State of California practicing it? Per my attorney, [my claims administrator] has paid me a settlement based on my age & the percentage that I'm permanently disabled. I will receive zero for the pain &

suffering I have had to endure since July 20, 2005, nor will I receive anything for the quality of my life that is forever changed. I was injured do to the negligent's of a co-worker. I can never afford to stop working. The percentage of California women ages 55 to 69 that were still working in 2006 was 46.4%. I am now 3 month's from age 65.

I do understand, and agree that workers compensation system needed to be reformed. The people who were using & abusing it needed to be stopped, but not to the point of hurting the very people it was intended to help. It has now created needless, & cruel hardships for disabled workers, especially seniors. Even if you do pass something, it will not help me.

Fast forward to November 15, 2006. I met with [name removed by moderator], the agreed medical evaluator. In a 20 page report, he said that it is his opinion that 100% of my permanent impairment was a result of the specific industrial injury. Due to all the stress I am under I came down with Shingles 3/15/07 & in the last year I have lost 25lbs. I'm 5'8' tall & all of my adult life my normal weight was 130. I didn't want to lose weight, & I now really look bad. This has cost me financially as well as emotionally & physically. I sill suffer from it today.

In March of last year I had to start taking my Social Security so I could eat, & pay my bills. I only received \$1,012.00 a month on my pay out (not to be confused with disability) [from the claims administrator]. My rent takes \$950.00 of that. My full retirement age is 66. I have lost 20% (\$164.00 per month) due to early retirement. I only receive \$496.00 from Social Security. By the way, I have never had to file a disability claim until the age of 62.

[The following paragraph has been removed from the comment as it does not pertain to the subject matter of the forum.]

I just wanted to survive with some dignity. Least you think I'm living high on the hog; I drive a 1985 Toyota, have a 26" 1990 TV with rabbit ears & recycle my milk from cereal. When I stopped working in Jan.06 I lost my medical & dental insurance. Thank God for my personal Doctor who only charges me \$25.00 for my office visits & gives me samples so I don't have to pay for some prescriptions I need & I can't always afford the meds that I have to pay for. I have suffered other medical problem's but why complain to you, you don't care.

Eric T. Johnson

May 17, 2008

I represent injured workers since 2003. Since the horrofic changes to the PD rating system wrought by SB899, I have had to turn away hundreds of injured workers with legitimate life altering injuries, but yielding tiny and unfair impairment ratings under the AMA guides. I could fill a bathtub with the tears of people who have come and left my office, after I have explained how this administration has screwed them. A mere 16% increase to the PD is a joke, a scam, and an insult to working Californian's. I would estimate that to bring this system back in line to any modicum of fairness, PD would have to increase at least 25%, and VR reinstated, at a minimum. Injured workers who haplessly find themselves in this system are universally dumbstruck by how absolutely

unfair they have been treated. That has truly been my experience. It is a sad state of affairs when a society turns its back on the sick and injured population.

Windy

May 16, 2008

If one works at a job where one might get permanent and/or serious injuries then the benefits should be substantial if one is injured. Yes, there will be those who will try to cheat their way to these benefits. The answer is to investigate anything that looks questionable until it is determined to be a valid or invalid claim. To have a system that cuts the benefits for all is not a fair system, it is a gift to employers and a penalty to the workers.

Absolutely, punish those who cheat but make sure you do not further damage those who are really damaged.

Kathryn L Pratt

May 16, 2008

I am currently receiving the maximum benefit allowed under Workers Compensation in California; \$1680 every two weeks. Fortunately I am also receiving \$1320 from my SSD until I can get back to work.

As an Environmental Project Manager, I was injured by a wreck-less driver while on my way back to my corporate office 18 months ago and sustained multiple head and facial injuries including an orbital blow out of my right eye, a TBI and permanent hearing loss and tenitis in my right ear.

Prior to the accident I was earning a base salary of \$105,000 annually with raises and bonuses to be determined by my ability to generate large contracts with Government and private clients.

I can no longer fulfill my role as a consultant as I can no longer drive due to permanent diplopia from the displacement of my eye. And because I have been out of my market sector and have not managed projects for such an extended period of time, my chances of re-entering my vocation at such a senior level have been greatly damaged - this work is based on strong working relationships over time and performance. This should be considered in benefit determinations for jobs such as mine.

My case is unusual in that I have been a high salary earner in a management position - my wages have been greatly reduced and therefore it has had a major impact on my ability to sustain my property and manage my financial affairs which were based on the higher earnings. These losses are never recognized - going from one vocational wage level down to another as the result of permanent injury - a person instead is compensated a low percentage of loss based on a formula - perhaps both should be considered. For example - If a person such as myself can no longer earn as much because they can't meet their employers needs (Driving from client to client to attend meetings and public hearings etc) their wages are reduced forever - they can not

provide this service to any other employer in the future. this reduces earning capacity. The only choice is to try to rehabilitate into a vocation that will provide equal or greater earning capacity. The trouble here is that there are such imitations on the amount of benefits and time one currently receives - it costs a great deal more and takes at least two years to earn proper certifications and training - this should be put into the equations too.

While I appreciate the benefits I am receiving, I have found that they do not cover other much needed services such as my vocational rehabilitation - this I am having to pay out of my monthly benefits thus greatly reducing my benefits (Approx \$600 monthly).

It is my sincere hope that the State of California will catch up to current economic demands and will take into consideration a persons need for vocational rehabilitation above and beyond what they are currently allowed.

I have heard the stories of many since my own injuries - many loosing their homes during the most crucial times toward the end of their 2 year benefit limitation - this while in their surgery room - leading to the loss of their homes and added stress and transitional trauma - this too needs to be addressed - critical care and benefit limitations.

I am facing the same situation in September. This system needs fixing. We need more than a small increase, we need sustainable support from our State and our elected leaders and officials. The current system is broken and so are the lives of those who have been subject to the limitations imposed since the major changes a few years back.

Bonnie Morr

May 16, 2008

I would like to call your attention to the workers who have given years of hard work to jobs that have been hazardous to their lives.

I am not speaking of the folks in safety

I am speaking about the folks in Public Service, the Transit Bus Operator, who for years never even had a lunch break.

If you take an individual and strap them into a seat for two thousand eighty hours per year, multiplied by twenty years, you will have a person with numerous abdominal problems, not to mention lack of circulation to ones legs and a spinal column that has been compressed due to poor equipment and bad roads.

How do you have the nerve to deny the individuals that have been so badly damaged that they cannot function any longer, can't lift their grandchild let alone a bag of groceries. Oh I guess we shouldn't worry about that because they can't afford a bag of groceries anyway.

Please allow the injured worker the right to a sustainable income, the person with permanent disability has lost everything that makes your life livable. Increase the benefit for all injured workers under permanent disability

Bonnie Morr, an injured worker with hips of steel and still working so I can sustain I just do not know for how much longer
The Buses and the roads are not getting any better

Matthew Barron

May 16, 2008

This week, the governor proposed draft regulations to modify the 2005 Permanent Disability Rating Schedule (PDRS), which slashed benefits for disabled workers. These newly released draft rules would restore a mere 16 percent average increase in benefits. Although this is a step in the right direction, this proposal is just a down payment to restore what the most severely disabled workers deserve. Stop Government alliances with big business that assault working class families striking the weakest links that have the least resources to fight back while their livelihoods and their family's futures are flushed down the drain so big business, can continue to get bigger and bigger at the expense of the rest of society. In this case insurance companies broker for a prime position to expect future compensation with wealth and power in future political schemes. Governor turns out to be the same old same old with a makeover as He redefines and repackages special interest in to propositions' speak that squeak by the average voter who do not take the time to read all the small print that guarantees the rug will be pulled out from under the working class and they'll be pulling the rug on themselves. Ha Ha Ha and Mr. Governor will whitewash and glamorize his type of politics as by the people and for the people when it's really by **his** people and for **his** people. Sadly this contribution to the conversation and debate is just a drop in a bucket with a big hole in it. My prayer is that for the sake of the poor, the injured, the mentally ill trying to survive while also fighting to get the health and disability benefits they deserve will get a break as small as it may be it makes a difference and any difference in favor of the injured workers is hope, and hope does not disappoint. From my lips to God's Dear Lord I pray.

No Name

May 15, 2008

In June 1997, my life as an educated, self-sustaining professional started spiraling down to the poverty struck woman in her early 60's fighting the system to get help while continuing to hold onto a career and not becoming more disabled. As a result of a civil suit, I agreed to give the Workers Compensation company \$30,000 up front and they agreed to life-time medical. I continued to try to work. It took three years to find excellent medical care and when I did, I started to improve and try to work. The company cut off care in 2004 and I continued to lose ground losing my opportunity to continue my career.

As a result of a recent mandatory hearing, my health care has now "conveniently" been held up for a third rating from the doctor that had already given me a 40% disability and granted me continued, periodic care. I have recently found a letter buried in my former attorneys file on me from the company stating that they would never interfere with

medical treatment. I cannot produce this letter in court because the judge has taken me "off calendar" for "another" rating. I thought that everyone was entitled to a day in court. The powers that be have used permanent rating as away to block my statement. I was told with a smile by the opposition that "this doctor is very busy. You will wait a year". I am now 73. I have been told by others, victims of this system: "deny, deny until you die" I have no doubt that no one will attend this statement.

John Harrigan

May 14, 2008

Where to begin? First, your own numbers show a minimum decrease of 40% in PD under AMA and adoption of the current schedule. The proposed "fix" of an alleged 16% average PD "increase" still represents a decrease of over 24% - some figures show actual PD decreases closer to 60% or more under current schedule. All of the numbers are skewed further by the fact that your studies DO NOT COUNT 0 % ratings as I understand it which apparently approach 20% of recent ratings by DEU - anecdotal figure. Many of these 0 % ratings represent people with major subjective pain limitations that may have rated 20-40% or more under the old system and now get NOTHING.

If those ratings are put back into the mix the PD reductions since 899 probably approach 70% and up thus making the "16% fix" even more insulting. Meanwhile industry has the nerve to state - see Work Comp central postings- that we will have to see what effect the proposed "increase" of PD will have on rates. Are you kidding me. The carriers own pie charts show that for distribution of premium from 2004 to 2007 (that's premium not including investment income) \$26 Billion went to benefits, \$19.1 Billion went to "Insurer expenses", and \$28.6 Billion went to PROFIT.

Less than 35.5% of premium went to benefits! Astounding - see Frank Russo's California Progress Report. (chart based on WCIRB stats released 3/31/2008) There is a special place in hell for those who would treat injured workers in this manner. I have an idea. Toss comp completely. Give us back liability and I will see you in front of a jury - of workers. For the 90% of folks that can't show negligence, they can rely on SDI and group health. That's what they are doing now anyway. For the 10% that can show negligence, hello!

Christine Mihelich

May 13, 2008

My name is Christine Mihelich and I have been denied Due Process and forced to self-represent in the Workers Compensation System going on 4 years. The proposed PDRS is not acceptable, and it is not a reform. SB 899 PDRS has been declared invalid in Boughner vs. Zurich, and stalling immediately implementing a valid PDRS appears to show how close your ties are to the corruption I have experienced as an injured worker in this system. SB 899 was not reform, it was corrupted co-opting of the CA governing bodies by corporate interests who syphon money out of the CA economy, and use injured workers--squeezing profits out of their injuries.

Please see my letter below and attached petition to our Senators and Legislators.

Dear Honorable Senators and Legislators:

New legislation probably was not intended to bar access to the courts and discriminate against a class of injured workers who did not require surgery, however the new laws effectively achieved that end by not allowing adequate compensation for Applicant Attorneys to assist these injured workers in obtaining medical care and benefits illegally denied by predatory Insurers/Employers. Nor does Labor Code 4903 specifically reimburse injured workers when they are denied Due Process and forced to self-represent.

The courts, the legislature, and especially the Governor appear to be living on a different map of reality not grasping how little employees understand about their employment rights or how the Workers Compensation procedures work. I'm a trained scientist and am just getting the gist, sort of, of what the Insurer is supposed to provide by law!

SB 899 is feeling like a Holocaust in Employees Health care which the Governor governs with a filmy eye. The fines to deter Bad Faith behavior are laughable. How can your constituents trust you to pull off health care reform in California when your decisions profit outsiders, the Insurance Companies, their lawyers, and their UR physicians, who don't even have to hold a CA Medical license, and who often don't even practice medicine--- who maim California workers with their decisions?

If there was access to legal representation and legal advice, my financial losses and bodily injuries could not have intensified. The I&A Officers at the WCAB cannot give legal advice, and the customer service line does not always give accurate answers. In just 3 years of self-representation, my losses are estimated over \$120,000.00 in lost wages and monies to cover my treatment during UR denials. My total PD payout for the past 3 years was ~ \$4800.00; I used to make about \$3500/month working part-time at the Claremont.

Please Don't Budge

1. Any new "phasing in" of a "paltry" PDRS change is an absolutely unacceptable solution to a lawless SB899 reform.

Please do not confirm John Duncan, or approve any of the Governor's proposals until an accurate and fair PDRS is put into immediate effect, and applicable to all open and stipulated cases. *The rating laws were declared "invalid" in Boughner vs. Zurich because AD-Hoch disobeyed the law and the WCAB appears to be stalling on its Answer for Reconsideration for a year now.*

There must be redress to her wrong, not more blatant lawlessness and tyrannical solutions.

2. Please also consider my WCAB submitted petition for Pro Se expenses including a 12%-15% Applicant Self-Representation Fee when the Insurer/Employer adjudicates a claim and the injured worker is unrepresented. LC 4903 does not specifically state Pro Se Applicants cannot have reimbursement when changes were made in 1991.

3. Furthermore, based upon the Bad Faith behavior injured workers are experiencing, perhaps it is time to bring back paid, non-attorney, injured worker advocates and reverse the changes to LC 4903 in Longval; and Greener vs. WCAB.

Moderator's note: The above referenced petition does not address the subject matter of this forum and therefore has been removed from this comment.

Kathleen Valvo

May 12, 2008

RE: PD Rating Schedule Regulations

I would have been more supportive if this was made retro-active to Jan. 1, 2000. Those of us that have been classified as permanently disabled are being left out. What we received as compensation was not enough to help us. Especially those of us that have spinal injuries. They are not pleasant. Even after surgery there are still problems and pain. My settlement was insulting. My back has been permanently injured and my range of motion has been impaired permanent. I will never get it back. I cannot do the things that I used to. It is really unfair, that my loss of wages for the rest of my working life was not considered. The attorney that represented me got better compensation than I did. I know that there is nothing that I can do to at this time. My case was settled in 2005. I was injured in 2001.

Cory Stephens

May 11, 2008

RE: PD Rating Schedule

Thank you for posting this. I appreciate your efforts to modify but the formulas are still way too low. If we must use this new schedule, the FEC needs to be adjusted more. Injured workers are losing their homes and families in great numbers due to inability to return to their old jobs and inability to get compensated enough to meet even the most basic needs. It is taking a great deal of money away from the state economy to not have injured workers compensated and have to rely on other government benefits. Please reconsider. I will send a more detailed response after more thorough review. Thank you for your time.

Dwight Greene

May 9, 2008

RE: Proposed increase in PD Benefits

Any increase in benefits should either be aimed at increasing the TD benefits or the medical benefits. Those are the two benefits that allow the worker to maintain during the injury or illness. They also address concrete, objectively measurable damages. The continued hocus focus around trying to determine PD compensation is primarily fueled by one fact, attorneys get paid a percentage of the workers' PD benefit. The convoluted machinations can be avoided if we focus on the needs of the workers instead of the profit of the attorneys.

Dennis Knotts

May 9, 2008

RE: PD Rating Schedule

My concern with the proposed PD Rating Schedule is that you have the level of impairment being set by the GAF, but it does not take into account the Diagnosis mandated by Labor Code 3208.3. Labor Code 3208.3 mandates that to have compensability you must have a mental disorder and it must be diagnosed per the DSM III or current edition [DSM IV]. Part of that diagnosis is the GAF, but it is a two-part test of the GAF. The physician must identify the current level of GAF, but then identify the highest level of GAF a year ago. This identifies if this is a pre-existing condition or not.

As the rating instructions on the new [and 2005] PDRS have pretty much removed any objective evidence from the process and returned it to a purely subjective assessment; I believe it is imperative that the Five Axis diagnosis mandated by the DSM III/IV be brought back into the pick. Especially since Administrative Regulation 10606 required a proper diagnosis in order for a medical report to qualify as evidence before the WCAB.

I would recommended that the section on psychiatric injuries be revised to include the requirements of Labor Code 3208.3 and the criteria set forth in the DSM III/IV to properly diagnosis the condition and then tie that in with the GAF assessment. Establishing a pre-injury level of GAF and the current level of GAF will reduce the potential of abuse for this process.

Marilyn Bailey

May 9, 2008

RE: PDRS

On the proposed PDRS, I don't see the usual crossouts and highlighting of changes. Is there another draft showing these changes?

Lilly Taylor

May 9, 2008

I am a rater and I find that knee impairments that I have rated often are very disabling; I think they should have the FEC of 8 like the Ankle.

John A. Don

May 9, 2008

WHILE IT IS NICE TO KNOW THAT THE PRESENT RATINGS WILL BE RAISED BY 16% - THIS STILL KEEPS CALIFORNIA AS ONE OF THE LOWEST STATES IN THE UNION IN COMPENSATING INJURED WORKERS. SOME MIGHT SAY WE ARE MERELY PUTTING LIPSTICK ON A PIG HERE.

IT APPEARS THAT THE DFEC FACTORS WERE DRAWN FROM THE RAND STUDY WHICH RATED WAGE LOSS IN COMPARISON TO SIMILARLY SITUATED WORKERS WITH THE SAME PERCENTAGE OF DISABILITY. THE RAND STUDY SHOWED THAT A PERSON WITH A 20% UPPER EXTREMITY RATING LOST GREATER WAGES THAN A PERSON WITH A 20% KNEE RATING.

THIS DATA WAS USED TO GIVE THE HANDS A GREATER DFEC TO CAPTURE THE GREATER WAGE LOSS. THE PROBLEM IS THAT THE AMA IMPAIRMENT AND DFEC ADJUSTMENT CAPTURE ABOUT 15% OF THE WORKERS' WAGE LOSS. THIS DOES NOT APPEAR TO BE FAIR OR ADEQUATE.

SHOULD WE COMPENSATE A WORKER FOR 2/3 OF HIS WAGE LOSS LIKE WE DO WITH TTD? EVEN A 1/3 COMPENSATION FOR ACTUAL WAGE LOSS AS EVIDENCED BY THE RAND STUDY WOULD BE BETTER THAN WHAT THE DWC IS PROPOSING.

DON'T GET ME WRONG. THE INCREASE IS HELPFUL, YET, IT STILL LEAVES A LOT TO BE DESIRED.